

EXHIBIT

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Proceeding for Construction of the : File No. 2781/62
Last Will of

MARILYN MONROE,

Deceased.

:
: ANSWER OF RESPONDENTS
: THE ANNA FREUD CENTRE
: AND EXECUTORS OF THE
: ESTATE OF MARIANNE KRIS
----- x

TO THE SURROGATE'S COURT, COUNTY OF NEW YORK:

Respondents, The Anna Freud Centre and Anton O. Kris and Anna Kris Wolff, as executors of The Estate of Marianne Kris, by their attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, with offices at 1285 Avenue of the Americas, New York, New York 10019-6064, respectfully answer the petition herein as follows. The numbered paragraphs in this answer correspond to the numbered paragraphs in the petition.

1. Admit the first sentence. As to the second sentence, admit that petitioner would have standing to commence a construction proceeding if there were any necessity for one, but deny that a construction proceeding is necessary.
2. Admit.
3. Admit on information and belief.
4. Admit on information and belief.
5. Admit.
6. Deny knowledge and information sufficient to form a belief as to the truth of the first sentence. The

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second sentence is a statement of the petitioner's intention to perform an act in the future, which requires no answer.

7. Admit, except deny knowledge and information sufficient to form a belief as to whether the payments described in this paragraph constitute income or principal.

8. Admit, except as to the characterization of the payments as "income," as to which deny knowledge or information sufficient to form a belief as to whether the payments are income or principal.

9. Admit.

10. Admit.

11. Admit the first sentence. As to the second sentence, state that both Anton O. Kris and Anna Kris Wolff, the two children of Marianne Kris, were appointed co-executors of Marianne Kris's estate. To the extent that the petition states that only Anton Kris was appointed executor of that estate, and to the extent that process was ordered to be served only on Anton Kris, the petitioner is in error. Respondent Anna Kris Wolff has nevertheless appeared, thereby curing the petitioner's error in this regard.

12. Admit on information and belief that petitioner expressed the view set forth in this paragraph of the petition. Deny that the decedent's will was unclear or there is any need for this proceeding.

13. Admit.

14. Deny knowledge and information sufficient to form a belief as to petitioner's advice from her counsel or as to petitioner's belief. Deny that paragraphs FIFTH and SIXTH of the Monroe Will are in need of construction.

15. Deny the first sentence. Admit the second sentence, except that the Monroe Will bequeaths the remainder of a trust to Dr. Kris for the purposes specified therein. Admit the third sentence. As to the fourth sentence, deny the characterization of the Kris Will. As to the balance of the fourth sentence, state that it is a description of the petitioner's request to the Court in this proceeding which requires no answer.

16. Deny the first sentence. Admit that the language of the Monroe Will does not expressly indicate whether or not the Kris bequests survived Kris's death and that it does not contain an explicit or implicit power of appointment. Deny that the grant of an explicit or implicit power of appointment would be necessary to permit Kris to bequeath her legacy to psychiatric institutions. In all other respects, deny.

17. Deny the first sentence. As to the second sentence, state that it describes the petitioner's request of the Court and therefore requires no answer, except that respondents deny that there is any need for a construction on this point.

18. As to the first sentence, deny that Kris understood her interest under the Monroe Will as a power of appointment and deny that a construction of the Kris Will is necessary. As to the balance of the sentence, state that it describes the petitioner's request to the Court and requires no answer. As to the second sentence, admit the description of Monroe's apparent intent and state that Kris selected the respondent The Anna Freud Centre (using its former name, which was then substantially correct), and therefore deny the stated necessity to determine "who the proper entities selected by the Will of Kris" (sic). Deny the characterization of Kris's interest as a power of appointment.

19. Admit.

20. As to the first sentence, deny that the Hampstead Child-Care Clinic no longer exists, and therefore deny that a construction is necessary with regard to a "successor" to Hampstead or the alternative bequest to Yale University. Deny that there is a successor to Hampstead Child-Care Clinic (because it still exists under a new name). As to the second sentence, deny that Yale University is entitled to any amount under either the Kris Will or the Monroe Will, because all conditions of both Wills were satisfied at the respective dates of death of the testatrices. As to the third sentence, state that Kris has

selected respondent The Anna Freud Centre (under its former name), and therefore petitioner has no derivative interest in the construction of the Kris Will. Deny the last sentence.

21. Admit on information and belief.

22. Deny on the ground that there is no bona fide good faith doubt that The Anna Freud Centre is currently entitled to twenty-five percent of the residuary estate under the Monroe Will.

23. Admit on information and belief.

24. Deny knowledge and information sufficient to form a belief as to the truth of this allegation.

WHEREFORE, respondents The Anna Freud Centre and the Estate of Marianne Kris pray that the Court declare that the Kris interest in the Monroe Will survived Kris's death; that The Anna Freud Centre is the psychiatric institution selected by Kris to receive that interest; and that The Anna

Freud Centre is entitled to twenty-five percent of the residuary estate under the Monroe Will.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By: Bernard J. Helsten

Attorneys for Respondents
The Anna Freud Centre and
Anton O. Kris and Anna Kris Wolff
as Executors of the
Estate of Marianne Kris
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Jonathan J. Rikoon being duly sworn upon information and belief, states that he is an attorney for respondents, The Anna Freud Centre and Anton O. Kris and Anna Kris Wolff as Executors of the Estate of Marianne Kris, respondents herein, and that he has read the annexed answer of the said respondents, and that the statements contained therein are true to his own knowledge, except as to matters stated to be upon information and belief, and as to those matters he believes them to be true; and that the reason why the verification is not made by respondents is that respondent The Anna Freud Centre is a charitable institution located in London, England, with none of its trustees located in the State of New York, and that respondents Anton O. Kris and Anna Kris Wolff are both residents of and presently residing in the Commonwealth of Massachusetts.

Jonathan D. Rikoon

Sworn to before me this
20th day of November 1989.

~~Notary Public~~

Notary Public in and for the State of New York
No. 41-45117
Qualified in Queens County
Commission Expires May 23, 1990

SURROGATE'S COURT:
COUNTY OF NEW YORK

-----X

Proceeding for Construction of : File No. 2781/62
the Last Will of :

MARILYN MONROE,

Deceased :

-----X

MEMORANDUM OF LAW OF
RESPONDENTS THE ANNA FREUD CENTRE
AND THE ESTATE OF MARIANNE KRIS

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
ATTORNEYS AT LAW
1285 AVENUE OF THE AMERICAS, NEW YORK, N.Y. 10019

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SURROGATE'S COURT:
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the Last Will of :
: MARILYN MONROE,
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MEMORANDUM OF LAW OF
RESPONDENTS THE ANNA FREUD CENTRE
AND THE ESTATE OF MARIANNE KRIS

Respondents The Anna Freud Centre (formerly known as The Hampstead Child-Therapy Course and Clinic) (the "Centre") and the estate of Marianne Kris (the "Kris estate") submit this memorandum in support of the plain meaning of the wills of Marilyn Monroe ("Monroe" or the "decedent") and Marianne Kris ("Dr. Kris") and respectfully urge the Court to uphold the interest of the Centre in the Monroe estate.

FACTS

Marilyn Monroe died on August 5, 1962, and her will was admitted to probate in this Court on October 30, 1962. Her will bequeathed \$100,000 in trust for the lifetime benefit of her mother and Mrs. Michael Chekhov. At the death of the survivor of the life beneficiaries, the remainder of the trust was directed to be paid "to Dr. Marianne Kris to be used by her for the furtherance of the work of such

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psychiatric institutions or groups as she shall elect,"
Article FIFTH(d).

Twenty-five percent of Monroe's residuary estate, after a pecuniary legacy payable from the residue, was likewise bequeathed to Dr. Kris "to be used by her as set forth in Article FIFTH(d) of this my Last Will and Testament." Article SIXTH(b).

Dr. Kris received no distributions from the Monroe estate during her life. She supported the Centre with her own funds, time and energy. She was a good friend and professional colleague of Anna Freud, and she was familiar with the work of the Centre and the role Anna Freud played in founding and directing the operations of the Centre. Dr. Kris admired the work of Dr. Freud and further assisted the Centre not only by electing it in her will as the psychiatric institution to receive the Monroe legacy but also by instigating a cooperative affiliation between the Centre and the Yale University Child Study Center, where Dr. Kris worked teaching and practicing psychiatry.

Dr. Kris died on May 23, 1980. Her will provides as follows with regard to the Monroe estate, in Article SIXTH:

I give and bequeath all property which I have received or am entitled to receive under the will of Marilyn Monroe, which I have not otherwise disposed of during my life, to the HAMPSTEAD CHILD-THERAPY CLINIC, London, England. If this Clinic is not in operation at

the time of my death, I give and bequeath the same to Yale University for the furtherance of the psychiatric work of its Child Study Center, and it is my wish and desire that such property be used as directed by Dr. Albert Solnit and/or Dr. Samuel Ritvo so long as one or both of such doctors are actively associated with the work of said Child Study Centre.

At the date of Dr. Kris's death, the Hampstead Child-Therapy Course and Clinic, London, England, was in operation. (There has never been a "Hampstead Child-Therapy Clinic" in London.) It was and is listed in the The Internal Revenue Service cumulative list of tax-exempt organizations, and the Internal Revenue Service has ruled that the Centre is an organization described in sections 501(c)(3) and 509(a) of the Internal Revenue Code. The Internal Revenue Service and the New York State Department of Taxation and Finance allowed a charitable estate tax deduction to the Kris estate for the disposition set forth in Article SIXTH of Dr. Kris's will.

The Centre was formally established by Dr. Anna Freud, in London, by a deed of trust in 1953, and is registered with the United Kingdom Charity Commission. It has never ceased its existence or merged with or into any other organization. During Dr. Freud's life, she was asked on a number of occasions to change the name of her clinic to the Anna Freud Centre but she declined, to avoid any appearance of self-aggrandizement. The Trustees of the Centre changed the name after her death to honor her memory and life's work. The change of name to The Anna Freud Centre

(technically, "The Anna Freud Centre for the Psychoanalytic Study and Treatment of Children") was approved by a "Scheme" of the United Kingdom Charity Commission in 1985.

The Centre receives contributions from a number of sources, including distributions from the Monroe estate (directly and through the Kris estate) received both before and after the 1985 name change. After the death of the decedent's mother and Mrs. Michael Chekhov, the life beneficiaries of the trust under Article FIFTH of the Monroe Will, the remainder of the trust was paid to the executors of Dr. Kris's estate; they in turn transmitted the funds so received to the Centre. The Centre also receives grants from The Anna Freud Foundation, a Massachusetts charitable trust that was created in 1953; the Foundation's governing instrument expressly names the Centre (under its then name) as an intended grant recipient, and grants from the Foundation have continued to be made to the Centre since its change of name.

The Centre's facilities are located near Anna Freud's former residence which is now a museum dedicated to Sigmund and Anna Freud. The museum is owned and operated by an English charitable trust and company controlled by the Sigmund Freud Archives in New York. The Centre, the Anna Freud Foundation and the Sigmund Freud Archives (and museum) are each separate and independent entities. One Trustee

of the Centre is also a Trustee of the Foundation, and another Trustee of the Centre is also a director of the Archives. The governance of the Centre is otherwise unrelated to that of either the Foundation or the Archives.

On January 27, 1987, the executors of the Kris estate wound up its administration and consequently assigned all of the Kris/charitable interest under the Monroe will to the Centre, pursuant to the Kris will.

QUESTION PRESENTED

Is the Centre a beneficiary of the estate of Marilyn Monroe?

ARGUMENT

I.

THE MONROE WILL BEQUEATHS THE REMAINDER OF THE PRERESIDUARY TRUST, PLUS 25% OF THE RESIDUARY ESTATE, ABSOLUTELY TO SUCH PSYCHIATRIC INSTITUTIONS AS DR. KRIS ELECTS

The most important and fundamental purpose of a construction proceeding is to determine the intent of the testator. Once the testator's intent is ascertained, the will is to be construed to give effect to that intent. E.g., Matter of Jones, 38 N.Y.2d 189, 379 N.Y.S.2d 55, 341 N.E.2d 565 (1975); Matter of Kosek, 31 N.Y.2d 475, 341 N.Y.S.2d 593, 294 N.E.2d 188 (1973); Matter of Thall, 18 N.Y.2d 186, 273 N.Y.S.2d 33, 219 N.E.2d 397 (1966) (first rule of

construction is that a will be interpreted to reflect the testator's intent); Matter of Dammann, 12 N.Y.2d 500, 240 N.Y.S.2d 968, 191 N.E.2d 452 (1963) (the "most urgent" rule of a testamentary construction proceeding is to ascertain the testator's intent); Matter of Fabbri, 2 N.Y.2d 236, 159 N.Y.S.2d 184, 140 N.E.2d 269 (1957).

Here, the testatrix expressly stated that 25% of her residuary estate, as well as the remainder of the Article FIFTH trust, was to be "used" by Dr. Kris for "the furtherance of the work of" psychiatric institutions to be elected by Dr. Kris. There is no suggestion in the will that Dr. Kris's "use" of the residuary interest or trust remainder for "the furtherance of the work" of charitable institutions was limited to her lifetime, or that the absolute bequests of that residuary interest and trust remainder to charity were to be cut off at Dr. Kris's subsequent death. To the contrary, Dr. Kris was herself a psychiatrist, and the legacies were not designed to "further" her own professional work (necessarily limited to her lifetime): she was required to elect "institutions or groups," a requirement that clearly imports continuity and permanence of the charitable legacies far beyond Dr. Kris's lifetime.

Indeed, Monroe and her attorney-draftsman knew how to create lifetime interests that terminate at death. Article FIFTH creates a trust for the lives of two

individuals, with the remainder at the death of the survivor of the two of them to institutions to be elected by Dr. Kris. Had Monroe wished to limit the interests of those institutions to Dr. Kris's lifetime, her will would have said so in the very provision in Article FIFTH (d) that disposes of the trust remainder at the death of the survivor of the two life beneficiaries. Of course, there is no such limitation in that provision, which also disposes of the 25% residuary interest by reason of the cross-reference in Article SIXTH(b). Nor is there any such limitation in Article SIXTH, which disposes of the residuary estate in the first instance. The charitable legacies clearly were not intended to terminate, and did not terminate, at Dr. Kris's death.

Several courts have construed similar bequests in like fashion even in the weaker case where the individual who was to select the charitable legatees had not done so and died without a will, like Dr. Kris's, that selected the charities. In Matter of Harrigan, 23 A.D.2d 667, 257 N.Y.S.2d 299 (2d Dept. 1965), aff'd, 18 N.Y.2d 881, 276 N.Y.S.2d 622, 223 N.E.2d 33 (1966), the will gave the residuary estate to the executrix "to be divided or used for any and all charities" that she selected (emphasis supplied). The Court held that "such disposition constitutes a valid charitable bequest" and did not fail on death of the

nominated executrix before designating the charities to receive the bequest (indeed, she died before the testatrix).

Similarly, in Matter of Michaels, 7 Misc. 2d 439, 165 N.Y.S.2d 234 (Sur. Ct., N.Y. Co. 1957), the Court was asked to construe testamentary provisions disposing of a portion of the remainder of a trust to a named individual "to be distributed by him" among educational institutions and charities. The named individual survived the testator but predeceased the life beneficiary of the trust. The Court recognized that "a testator often is content merely to outline in broad terms the [charitable] field of his choice and to leave the selection of beneficiaries to the one who is in a position to judge present needs and merits," id. at 441-442, 165 N.Y.S.2d at 236-37, and went on to hold that the charitable legacy survived the death of the named individual. Here, the Monroe will similarly outlined the charitable field -- psychiatry -- and left the selection of particular institutions to Dr. Kris, herself a psychiatrist familiar with institutions eligible for the legacy.

Again, in Matter of O'Connor, 45 Misc. 2d 1033, 258 N.Y.S. 2d 688 (Sur. Ct., Broome Co. 1965), the decedent bequeathed his residuary estate in trust to his executor to be distributed among such Roman Catholic charities as the executor selected. The decedent's executor died shortly after the decedent, but prior to designating such charities.

The Court determined the probable charitable intentions of the executor and ordered distribution accordingly. And in Matter of Jones, 27 Misc. 2d 569, 213 N.Y.S. 2d 92 (Sur. Ct., Kings Co. 1961), the will directed the executors to divide the remainder of the residuary trust, after the death of the life tenants, among Protestant and nonsectarian charities in Brooklyn. The executors survived the decedent but predeceased the life tenants without having designated charitable beneficiaries. The Court implemented the testator's charitable purpose by designating the charities itself, citing Pers. Prop. L. § 12(1) (now EPTL 8-1.1(1)).

Legacies to charities to be selected after the decedent's death are, of course, valid, as these four cases held. The seminal case upholding such a legacy is Matter of Dubrow, 245 N.Y. 469, 157 N.E. 747 (1927) (upholding legacy to charities that had been selected by executor under will directing executor to distribute residuary estate "where he . . . shall consider it will be most effective in the advancement of Christ's Kingdom on earth."). In our case, of course, Dr. Kris did designate the charitable beneficiary before her death (as had the Dubrow executor), and there is no need to have the Court do so as in Harrigan, Michaels, Jones and O'Connor. Dr. Kris's designation of the Centre (under its former name) is no less valid merely because the nature of the assets of the Monroe estate appears likely to

produce a growing revenue flow to the residuary beneficiaries long after Kris's death.

What we have urged thus far is a simple, straightforward reading of the Monroe will, which is in fact clear and unambiguous. In addition, the reading we urge is supported by the broad public policy in favor of charitable bequests. In construing charitable bequests, courts are influenced by the public policy favoring charitable giving. "Where a testator has apparently sought to leave money for charitable purposes, a liberal construction is to be given to the terms of the will in order to uphold it and validate the bequest." Matter of Potter, 307 N.Y. 504, 507, 121 N.E.2d 522, 528 (1954); accord, Matter of Nurse, 35 N.Y.2d 381, 388, 362 N.Y.S.2d 441, 446, 321 N.E.2d 537, 540 (1974); Matter of Stalp, 79 Misc. 2d 412, 359 N.Y.S.2d 749 (Sur. Ct., Kings Co. 1974).

Guided by this public policy, "[w]here the charitable purpose of a testator is evident from the provisions of a will, the courts will strain to sustain a legacy to charity," Matter of Kaufman, 30 Misc. 2d 860, 219 N.Y.S.2d 627 (Sur. Ct., Kings Co. 1961) (court upheld legacy to (foreign) charity even though executors were given broad discretion in selecting charitable beneficiary); accord, Matter of Martin, 32 A.D.2d 849, 300 N.Y.S.2d 751 (3d Dept. 1969). When construing charitable provisions and bequests,

"the most liberal construction will be given to the terms of a will in order to validate a charitable bequest." Matter of Martin, 300 N.Y.S.2d at 753.


In fact, "testamentary language is to be construed most favorable [sic] toward the sustaining of charitable bequests." Estate of Bush, 124 Misc. 2d 40, 475 N.Y.S.2d 311, 313 (Sur. Ct., Lewis Co. 1984). See Matter of Dubrow, supra p. 9, 245 N.Y. 469, 157 N.E. 747 (1927) (will directed executor to distribute the entire residuary estate "where he . . . shall consider it will be most effective in the advancement of Christ's Kingdom on earth"; Court of Appeals unanimously reversed the Appellate Division and upheld the bequest against a number of challenges; "the intention to make a gift for charitable and religious purposes pervades and dominates the whole bequest and the court will give it effect if it is possible to do so by the application of the most liberal rules of construction that the law will permit.") See also, Matter of Carper, 67 A.D.2d 333, 415 N.Y.S.2d 550 (4th Dept. 1979), aff'd, 50 N.Y.2d 974, 431 N.Y.S.2d 468, 409 N.E.2d 941 (1980) (where testator demonstrates charitable intent, liberal rules of construction will be applied to support the bequest); Matter of Hampton, 15 Misc. 2d 846, 182 N.Y.S.2d 439 (Sur. Ct., Kings Co. 1958) (testator's will embodied a general charitable intent, and thus the court strained to uphold the bequest even though

specific provision of the will could not be carried out with exactitude); Matter of Kittinger, 36 Misc. 2d 385, 232 N.Y.S.2d 922 (Sur. Ct., N.Y. Co. 1962) (where a will discloses a charitable intent, the court will effectuate that intent by applying liberal rules of construction even if there has been a change in circumstances which makes it impossible to carry out the particular charitable intent of the testator).

The public policy in favor of charity is not diminished if the designated charity happens to be foreign. See Matter of Kaufman, *supra* p. 10 (Israel); Matter of Thomas, 38 Misc. 2d 48, 235 N.Y.S.2d 601 (Sur. Ct., N.Y. Co. 1962) (Libya, Lebanon).

Any construction of the Monroe will to the effect that the charitable interests died with Dr. Kris would entirely defeat the testatrix's obvious charitable intent (as well as the plain meaning of her will and the strong public policy upholding charitable legacies). No distributions were made in respect of the legacy during Dr. Kris's life, and if the legacy terminated at her death, charity would receive not a single penny from the Monroe estate.

Indeed, Dr. Kris died before the termination of the preresiduary trust, and if any reading of the Monroe will is adopted other than the one we urge, the trust remainder was not specifically disposed of under those circumstances. That



tortured interpretation would read into the will an unstated condition that Dr. Kris must survive the life tenants for charity to take the remainder, with no express disposition of the remainder charity supposedly forfeited. And if Dr. Kris had died before the decedent, under the strained anti-charity construction apparently urged by the petitioner, again charity would receive nothing -- a result precisely opposite to the results on those same facts in Harrigan, supra p. 7, Michaels and O'Connor, supra p. 8, and Jones, supra p. 9, all of which implemented similar language after the death of the individual who was to designate charitable "beneficiaries." Our case, of course, is much stronger than these four cases, because here, not only did Dr. Kris survive the decedent, but she also elected the charity, as required by the Monroe will.

II.

DR. KRIS ELECTED THE CENTRE AS THE PSYCHIATRIC INSTITUTION TO RECEIVE THE MONROE LEGACIES

The petition in this construction proceeding incorrectly alleges that "the Hampstead Child-Care Clinic no longer exists" (¶ 20). In fact, that entity, named in Dr. Kris's will, is alive and well, as attested by the affidavits submitted herein by Hugh R.B. Hamilton (a British lawyer and a Trustee of the Centre who was also Anna Freud's personal solicitor and Executor), Dr. Albert Solnit (a

Trustee of the Centre who was well acquainted with Dr. Kris), Dr. Anton Kris (Dr. Kris's son and a co-executor of her will) and Charles Mandelstam (Dr. Kris's attorney and the draftsman of her will). It is clear from the four corners of Dr. Kris's will as well as from these affidavits and the documents annexed to them that Dr. Kris intended to elect the Centre to receive the 25% legacy under the Monroe will, that the subsequent name change of the Centre was consistent with her wishes and that there has been no merger or termination of or successor to the institution she named in her will.

The only condition in the Monroe will to the Kris legacies is that Dr. Kris use the legacies for one or more psychiatric institutions or groups as she "elects." She elected the Centre (under a variation of its former name) by Article SIXTH of her will. The only condition in her will is that the Centre be in operation at her death. It was. Thus, the Monroe legacies, which vested in psychiatric institutions in general (EPTL 8-1.1) in 1962 (at Monroe's death), vested in the Centre in 1980 (at Dr. Kris's death), when the final condition was satisfied. Even if the Centre had subsequently merged with another organization (which it did not), the 25% residuary interest would have passed to the Centre's successors, as a vested property interest. And even if the legacy had not vested under those hypothetical circumstances, where a donee ceases to exist and merges into another institution

with similar purposes, the successor will receive the legacy.

Matter of Syracuse University, 3 N.Y.2d 665, 171 N.Y.S.2d 545, 148 N.E.2d 671 (1958); Matter of Ablett, 3 N.Y.2d 261, 165 N.Y.S.2d 63, 144 N.E.2d 46 (1957).

The fact that the Kris will omitted two words of the official name of the Centre at the time is of no consequence. There is no entity but the Centre which had a name and location close to those in the will, and Dr. Kris's long association with the Centre and her directions to her draftsman remove any doubt. As the Court of Appeals ruled long ago:

A misnomer or misdescription of a legatee or devisee, whether a natural person or a corporation, will not invalidate the provision or defeat the intention of the testator, if, either from the will itself or evidence dehors the will, the object of the testator's bounty can be ascertained. No principle is better settled than that parol evidence is admissible to remove latent ambiguities, and when there is no person or corporation in existence precisely answering to the name or description in the will, parol evidence may be given to ascertain who were intended by the testator. A corporation may be designated by its corporate name, by the name by which it is usually or popularly called and known, by a name by which it was known and called by the testator, or by any name or description by which it can be distinguished from every other corporation; and when any but the corporate name is used, the circumstances to enable the court to apply the name or description to a particular corporation and identify it as the body intended, and to distinguish it from all others and bring it within the terms of the will, may, in all cases be proved by parol.

Lefevre v. Lefevre, 59 N.Y. 434 (1875). Accord, Matter of Klein, 39 Misc. 2d 960, 242 N.Y.S.2d 241 (Sur. Ct., N.Y. Co.

1963) (where the issue involved was merely one of misnomer, the Court directed that the bequest be paid to the intended charitable beneficiary); Thomas, supra p. 12 at 49, 235 N.Y.S.2d at 601; Matter of Bloch, 30 Misc. 2d 959, 220 N.Y.S.2d 455 (Sur. Ct., N.Y. Co. 1961); Matter of Bergen, 22 Misc. 2d 762, 193 N.Y.S.2d 817 (Sur. Ct., Dutchess Co. 1959); Matter of Loew, 6 Misc. 2d 863, 165 N.Y.S.2d 689 (Sur. Ct., Suffolk Co. 1957); Matter of Krauthoff, 141 N.Y.S.2d 591 (Sur. Ct., N.Y. Co. 1955); Matter of Kearney, 199 Misc. 1085, 104 N.Y.S.2d 959 (Sur. Ct., N.Y. Co. 1951); Matter of Stymus, 64 N.Y.S.2d 304 (Sur. Ct., Westchester Co. 1946).

CONCLUSION

For the reasons set forth above we urge the Court to hold that the Anna Freud Centre is the absolute legatee of

both the remainder of the preresiduary trust and 25% of the residuary estate of Marilyn Monroe.

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